**IN THE** HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.985 OF 1997

1. Mrs. Vaidhei Ramchandra Behere
   of Dombivli, Indian Inhabitant
   aged about 44 years, residing
   at Behere Baug, Near C.K.P.
   Hall, Gadkari Path, Dombivali
   (East), District Thane.

2. Ramchandra Vasudeo Behere
   of Dombivli, Indian Inhabitant
   aged about 44 years, residing
   at Behere Baug, Near C.K.P.
   Hall, Gadkari Path, Dombivali
   (East), District Thane having
   their office at B-47, Shivaji
   Udyay Nagar, MIDC, Dombivali. .... Petitioners

- Versus -

1. State of Maharashtra

2. Shri Tadvi
   working as Police Sub
   Inspector

3. Shri Pawar
   working as Police Constable

4. Shri Joshi
   working as Police Constable

5. Smt. Shakuntala Sonawane
   working as Lady Police
   Constable

6. Shri Dabhade
   working as Assistant Police
   Inspector

7. Shri Munde
   working as Police Inspector

All working at Kranti Chowk Police
Station, Aurangabad.

8. Shri Ulhas Joshi,
   Commissioner of Police,
   Aurangabad.

9. The Directorate General of Police, having its office at Regal Cinema, Bombay-400 001.

10. Shri Ram Bhogale Indian Inhabitant, residing at 20 Mitra Mandal Colony, Usmanpura, Aurangabad. .... Respondents

Ms Sonia Miskin, Advocate (appointed) for the Petitioners.

Shri F.R. Shaikh, Addl. Public Prosecutor, for the Respondent No.1-State.

Shri Ganesh Gole, Advocate, for the Respondent Nos.6 and 7.

**CORAM:** R.M.S. KHANDEPARKAR & A.A. SAYED, JJ.

**DATED:** NOVEMBER 19, 2007

**ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):**

1. Heard. By the present petition, the petitioners are seeking direction for initiating disciplinary action against the respondent-police officers as also for compensation for the alleged illegal arrest of the petitioner No.1 during night hours inspite of specific directions by the Apex Court that a female cannot be arrested after sunset and before sunrise.

2. It is the case of the petitioners that the petitioner No.1 was sought to be arrested on 3-7-1997 during early hours i.e., at about 2:30 a.m. from her residence along with her husband and they were taken to

Nashik. It is their case that there are specific directions issued by the Apex Court that a female cannot arrested after sunset and before sunrise and inspite of those specific directions, the petitioner No.1 was arrested during night hours. It is further case of the petitioners that the arrest was made on the basis of false complaint filed by her relation/respondent No.10. The said complaint was filed as a counterblast to the civil litigation initiated by the petitioners in relation to the property left upon the death of the father of the petitioner No.1.

3. It is the case of the respondents and in particular the respondent No.2, who is stated to have arrested the petitioners, that when he went to arrest the petitioner No.2, who is the husband of the petitioner No.1, the latter insisted that she would accompany her husband. It is his further case that she was specifically informed by the respondent No.2 that she could not be arrested after sunset and, therefore, she would be taken in custody after sunrise on 3-7-1997. However, as she insisted for accompanying her husband, she was allowed to do so.

4. The learned Advocate appearing for the petitioners submitted that the fact that the petitioners were arrested during night hours is not in dispute and there

is a clear admission to that effect which apparently discloses the violation of the directions issued by the Apex Court and, therefore, it is a clear case for directing necessary disciplinary action against the respondent No.2 and the other police officers who are responsible for the illegal arrest of the petitioner No.1, as also for compensation claimed by the petitioners. The learned A.P.P., on the other hand, drawing our attention to the order dated 27-9-2005, issued by the Police Commissioner of Aurangabad, submitted that necessary action was taken against the respondent No.2 for arresting the petitioner No.1 during night hours and considering the same, the grievance of the petitioners cannot survive.

5. The fact that the petitioner was taken into custody along with the petitioner No.2 is not in dispute. However, it is the case of the respondents that the petitioner No.1 compelled herself to be taken into custody along with the petitioner No.2 as she insisted for accompanying the petitioner No.2 when the petitioner No.2 was arrested by the respondent/police. He was arrested at about 2:30 a.m.. It is their further case that inspite of specific intimation to the petitioner No.1 that she could not be taken into custody during night hours, she herself insisted for accompanying her husband who was arrested at 2:30 a.m., and, therefore,

the respondents were left with no alternative than to allow her to accompany her husband and in those circumstances, the petitioner No.1 was also taken into police custody. There is a categorical averment to that effect in the affidavit in reply filed by the respondent No.2 which reads thus:

> "The accused opened the door and seeing all of us in uniform, they asked us the purpose of our visit, I explained to them the reasons as well as showed them the written order given to me and a copy of the F.I.R. and also informed them that I have to produce them at Aurangabad. I say that, I had informed Petitioner No.1 that she would be taken in the morning as she cannot be arrested after sun-set. I say and submit that Petitioner No.1 insisted upon accompanying her husband as she apprehended fear at the hands of Respondent No.10 during journey and at Aurangabad. I say that the Petitioner No.1 was all the time accompanied with her husband and a Lady Police constable Sonawane."

It is pertinent to note that the above statements of facts have not been disputed by the petitioners either by filing any rejoinder or otherwise. There is no material on record to dispute the correctness of the statements on oath by the respondent No.2, quoted above. In the circumstances, therefore, it is apparent that the petitioner No.1 voluntarily accompanied the petitioner No.2 and thereby virtually compelled the respondent/police to arrest her during night hours. In such circumstances, can the arrest of the petitioner No.1 during night hours be said to be illegal?

6. The first point which arises for consideration is, therefore, whether there is total bar for the arrest of a female person during night hours? Neither the decision in **D.K. Basu v. State of West Bengal,** reported in AIR 1997 SC 610 nor the one in **Joginder Kumar v. State of U.P. and others,** reported in AIR 1994 SC 1349 prohibits the arrest of a female during night hours though both the decisions were delivered after taking into consideration the import of the Articles 21 and 22 of the Constitution of India.

7. The said point, however, came up for consideration before the Apex Court in **State of Maharashtra v. Christian Community Welfare Council of India and another,** reported in AIR 2004 SC 7 = (2003) 8 SCC 546

wherein the Nagpur Bench of our High Court had directed that the State Government should issue instructions in unequivocal and unambiguous terms to all the concerned that no female person should be detained or arrested without the presence of a lady constable, and in no case, after sunset and before sunrise. The matter was carried in the appeal before the Apex Court and while deciding the appeal, it was held that:

> "9. Herein we notice the mandate issued by the High Court prevents the Police from arresting a lady without the presence of a lady constable. Said direction also prohibits the arrest of a lady after sunset and before sunrise under any circumstances. While we do agree with the object behind the direction issued by the High Court in Cl.(vii) of operative part of its judgment, we think a strict compliance of the said direction, in a given circumstance, would cause practical difficulties to the investigating agency and might even give room for evading the process of law by unscrupulous accused. While it is necessary to protect the female sought to be arrested by the

Police from Police misdeeds, it may not be always possible and practical to have the presence of a lady constable when the necessity for such arrest arises, therefore, we think this direction issued requires some modification without disturbing the object behind the same. We think the object will be served if a direction is issued to the Arresting Authority that while arresting a female person, all efforts should be made to keep a lady constable present but in circumstances where the Arresting Officer is reasonably satisfied that such presence of a lady constable is not available or possible and/or the delay in arresting caused by securing the presence of a lady constable would impede the course of investigation such Arresting Officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady constable. We also direct that

> with the above modification in regard to the direction issued by the High Court in Cl.(vii) of this appeal, this is disposed of."

8. If one peruses the above quoted para from the decision of the Apex Court, it is apparent that there is no prohibition for the arrest of a female person during night hours. Of course, it is advisable not to arrest a female person during night hours unless the circumstances warrant the same. However, in such a case all the necessary precautions are required to be taken including the presence of a lady constable and strict observance of the rule of decency. As seen above, in the case in hand, the circumstances under which the petitioner No.1 came to be taken into custody during the night hours and the fact that she was accompanied by a lady constable all-throughout being not disputed, there is no substance in the grievance made by the petitioners. We are also fortified in this view by the decision of the Apex Court in **Rajkumari and another v. S.H.O., Noida and others,** reported in AIR 2003 SC 4693.

9. Question of grant of any relief either in the nature of compensation or otherwise to the petitioners cannot arise as the situation in which the petitioner No.1 was arrested was invited by the petitioner No.1 herself. As

the facts disclosed from the affidavit reveal that the respondent/police were left with no alternative than to take the petitioner No.1 in custody at the relevant time, there was no violation of any direction issued by the Apex Court, question of grant of any compensation, therefore, does not arise.

10. In the circumstances, therefore, while appreciating the efforts by the learned Advocate for the petitioners, appointed under the legal aid services, the petition is liable to be dismissed and is accordingly hereby dismissed. The rule is discharged with no order as to costs.

(A.A. Sayed, J.) (R.M.S.Khandeparkar, J.)

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